

**PLANNING COMMISSION RESOLUTION NO. 24-004**

**A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE REMOVING OIL AND GAS DEVELOPMENT USES AS CONDITIONALLY PERMITTED USES IN PLANNED DEVELOPMENT DISTRICTS 17 AND 55, REQUIRING OIL AND GAS DEVELOPMENT USES TO BE EXPRESSLY LISTED AS PERMITTED OR CONDITIONALLY PERMITTED USES IN A DISTRICT TO BE PERMITTED OR ELIGIBLE FOR CONDITIONAL USE PERMITS, AMENDING OIL AND GAS PRODUCTION REGULATIONS, AND FINDING THE ACTION EXEMPT FROM CEQA**

**WHEREAS**, the City of Brentwood regulates oil and gas development within the City via Brentwood Municipal Code (BMC) Chapter 17.680, entitled "Oil and Gas Production," and designates oil and gas development as conditionally permitted uses in Planned Development Districts 17 and 55; and

**WHEREAS**, due to the density of residential development in Planned Development Districts 17 and 55 and the presence of other sensitive uses in those districts, including public parks, daycare facilities, and preschools, as well as the significant adverse local health, safety, aesthetic, noise, and other impacts of oil and gas development, oil and gas development is no longer appropriate as a conditionally permitted use in those districts; and

**WHEREAS**, the City now wishes to remove oil and gas development uses as conditionally permitted uses in Planned Development Districts 17 and 55, such that oil and gas development uses are not permitted or conditionally permitted uses in any district within the City, and to adopt a more robust set of regulations of oil and gas development activities to better protect public health and safety should a future Council decide to designate oil and gas development uses as permitted or conditionally permitted uses in any district; and

**WHEREAS**, the Planning Commission recommended adoption of a proposed ordinance enacting a permanent ban on oil and gas development operations in the City of Brentwood on May 2, 2023; and

**WHEREAS**, following the Planning Commission's resolution, the California Supreme Court decided *Chevron USA, Inc. et al v. County of Monterey, et al.* (2023) 15 Cal.5th 135, which held that an ordinance prohibiting certain methods and practices of oil and gas production impermissibly conflicted with state law; and

**WHEREAS**, in light of the recent decision, staff recommended a revision of the proposed ordinance; and

**WHEREAS**, staff presented an informational update to the City Council on October 10, 2023, and informed the City Council that the revised proposed ordinance

would be returned to the Planning Commission for its review and recommendation; and

**WHEREAS**, there are presently no active oil and gas drilling or production operations within City limits, and no approved requests for land use entitlements to construct or operate such oil and gas drilling or production facilities; and

**WHEREAS**, this action is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and the categorical exemption set forth in Section 15308 of the CEQA Guidelines for Class 8 – Actions by Regulatory Agencies for the Protection of the Environment; and

**WHEREAS**, the Planning Commission gave notice as required by law of a public hearing to consider the proposed Ordinance, including publication in the Brentwood Press on January 5, 2024; and

**WHEREAS**, on January 16, 2024, the Planning Commission held a noticed public hearing to receive and consider both oral and documentary evidence relating to the proposed Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Brentwood does hereby resolve as follows:

**SECTION 1.** With respect to Brentwood Municipal Code Section 17.870.008, which provides:

*No rezoning of property or text amendment shall occur which is inconsistent with the city's community development plan. In making a decision, the planning commission and council shall consider the consistency of the proposed action to the community development plan and other applicable city plans, and shall consider whether the proposed action is inappropriate or otherwise contrary to the public interest.*

The Planning Commission finds the proposed ordinance is consistent with the City's General Plan, particularly, but not limited to, General Plan Goal IF 1 ("Maintain and improve Brentwood's infrastructure to provide high-quality services and protect health and safety") insomuch as this action will protect public health and safety; and Goal SA 4 ("Protect citizens from dangers related to the movement, storage, and manufacture of hazardous materials"), insomuch as this action will protect citizens from dangers related to the movement, storage, and manufacture of oil and gas.

The Planning Commission likewise finds that the changes set forth by proposed Ordinance No. \_\_\_ are in service of the public health and welfare of the residents of the city of Brentwood, and thus are not inappropriate or otherwise contrary to the public interest.

Specifically, the Planning Commission hereby makes the following findings:

- A. Oil and gas development activities can have significant and prolonged environmental and health effects, including substantial increases in localized air pollution and emissions, which can in turn result in significant long-term climate change effects.
- B. Other risks associated with such activities include adverse effects on reproductive health and birth weights, and the potential for workplace related incidents such as vehicle collisions and explosions/fires.
- C. Restricting the locations of oil and gas development activities within the City of Brentwood protects the community’s ability to enjoy clean air and water, and to live and work in a healthy and thriving place.

**SECTION 2.** The Planning Commission finds that the proposed Ordinance is exempt from CEQA pursuant to the “common sense” exemption under CEQA Guidelines Section 15061(b)(3), as the action will not cause a change in any of the physical conditions within the area affected by the ordinance, and the categorical exemption set forth at CEQA Guidelines Section 15308 for Class 8 – Actions by Regulatory Agencies for the Protection of the Environment.

**SECTION 3.** The Planning Commission hereby recommends the City Council approve the proposed ordinance attached hereto and incorporated herein as Exhibit A.

**ADOPTED** by the Planning Commission of the City of Brentwood at its regular meeting on January 16, 2024, by the following vote:

AYES: Brand, Flohr, Johnson, Sparling, Roberts  
 NOES: None  
 ABSENT: None  
 RECUSE: None

APPROVED:

  
 \_\_\_\_\_  
 Anita Roberts  
 Planning Commission Chairperson

ATTEST:

  
 \_\_\_\_\_  
 Erik Nolthenius  
 Planning Manager

**ORDINANCE NO. \_\_\_\_****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD REMOVING OIL AND GAS DEVELOPMENT USES AS CONDITIONALLY PERMITTED USES IN PLANNED DEVELOPMENT DISTRICTS 17 AND 55, REQUIRING OIL AND GAS DEVELOPMENT USES TO BE EXPRESSLY LISTED AS PERMITTED OR CONDITIONALLY PERMITTED USES IN A DISTRICT TO BE PERMITTED OR ELIGIBLE FOR CONDITIONAL USE PERMITS, AMENDING OIL AND GAS PRODUCTION REGULATIONS, AND FINDING THE ACTION EXEMPT FROM CEQA**

**WHEREAS**, the City of Brentwood (City) regulates oil and gas development within the City via Brentwood Municipal Code (BMC) Chapter 17.680, entitled "Oil and Gas Production," and designates oil and gas development as conditionally permitted uses in Planned Development Districts 17 and 55, but the City now wishes to revise those designations and adopt a more robust set of regulations of oil and gas development activities; and

**WHEREAS**, on April 12, 2022, the City Council adopted Interim Urgency Ordinance No. 1036, pursuant to California Government Code section 65858, which authorized a temporary moratorium on new oil and gas development in the City of Brentwood, so that City staff could study and analyze the subject and prepare a comprehensive update to the BMC to regulate oil and gas activities moving forward; and

**WHEREAS**, in accordance with Government Code section 65858(a), the City Council subsequently extended said Urgency Ordinance for an initial period of 10 months and 15 days, followed by a final period of one year; and

**WHEREAS**, after using the time provided by the adoption of the interim moratorium, staff has studied, analyzed, and reported on the benefits and detriments of enacting a permanent ban on new oil and gas development, and has recommended and prepared this Ordinance to restrict the locations in the City in which oil and gas development uses may be conducted subject to conditional use permits; and

**WHEREAS**, due to the density of residential development in Planned Development Districts 17 and 55 and the presence of other sensitive uses in those districts, including public parks, daycare facilities, and preschools, as well as the significant adverse local health, safety, aesthetic, noise, and other impacts of oil and gas development, oil and gas development is no longer appropriate as a conditionally permitted use in those districts; and

**WHEREAS**, the revisions to Chapter 17.860 include the addition of a provision stating that, to be permitted or conditionally permitted uses in any zoning district in

the City, oil and gas development uses must be expressly listed as permitted or conditionally permitted uses within that district; and

**WHEREAS**, as a result of the revisions to Chapter 17.860 and the changes to Planned Development Districts 17 and 55, oil and gas development uses will not be permitted or conditionally permitted uses in any zoning district in the City; but should a future change to zoning designations list oil and gas development as a permitted or conditionally permitted use in a zoning district, the amendments to Chapter 17.860 will better protect the health and safety of City residents and visitors; and

**WHEREAS**, on May 2, 2023, the Planning Commission held a public hearing and unanimously adopted (1) a resolution recommending the City Council adopt an ordinance enacting a permanent ban on oil and gas developments within the City, and (2) a resolution recommending, in the alternative, that the City Council adopt an ordinance enacting more stringent regulatory control measures for existing oil and gas developments in the City; and

**WHEREAS**, the City published a Notice of Public Hearing in the Brentwood Press on July 28, 2023 in accordance with City policies and Government Code Section 65090; and

**WHEREAS**, on August 8, 2023, the City Council continued consideration of the matter to September 12, 2023; and

**WHEREAS**, on September 12, 2023, the City Council continued consideration of the matter to October 10, 2023; and

**WHEREAS**, on October 10, 2023, the City Council was provided an update on this matter, and informed that it would be brought to the Planning Commission for further review pursuant to Government Code section 65857; and

**WHEREAS**, the proposed ordinance was presented to the Planning Commission for its further review pursuant to Government Code section 65857 on January 16, 2024; and

**WHEREAS**, adoption of the Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines because this ordinance will not cause a change in any of the physical conditions within the area affected by the ordinance; the Ordinance is also categorically exempt pursuant to Section 15308 of the CEQA Guidelines for Class 8 – Actions by Regulatory Agencies for the Protection of the Environment.

**NOW, THEREFORE**, the City Council of the City of Brentwood does ordain as follows:

**SECTION 1. Recitals.** The recitals set forth above are hereby adopted as the findings of the City Council in connection with the adoption of this ordinance.

**SECTION 2.** With respect to Brentwood Municipal Code Section 17.870.008, which provides:

*No rezoning of property or text amendment shall occur which is inconsistent with the city's community development plan. In making a decision, the planning commission and council shall consider the consistency of the proposed action to the community development plan and other applicable city plans, and shall consider whether the proposed action is inappropriate or otherwise contrary to the public interest.*

The City Council finds the proposed ordinance is consistent with the City's General Plan, particularly, but not limited to, General Plan Goal IF 1 ("Maintain and improve Brentwood's infrastructure to provide high-quality services and protect health and safety") inasmuch as this action will protect public health and safety; and Goal SA 4 ("Protect citizens from dangers related to the movement, storage, and manufacture of hazardous materials"), inasmuch as this action will protect citizens from dangers related to the movement, storage, and manufacture of oil and gas.

The City Council likewise finds that the changes set forth by Ordinance No. \_\_\_ are in service of the public health and welfare of the residents of the city of Brentwood, and thus are not inappropriate or otherwise contrary to the public interest.

Specifically, the City Council hereby makes the following findings:

- D. Oil and gas development activities can have significant and prolonged environmental and health effects, including substantial increases in localized air pollution and emissions, which can in turn result in significant long-term climate change effects.
- E. Other risks associated with such activities include adverse effects on reproductive health and birth weights, and the potential for workplace related incidents such as vehicle collisions and explosions/fires.
- F. Restricting the locations of oil and gas development activities within the City of Brentwood protects the community's ability to enjoy clean air and water, and to live and work in a healthy and thriving place.

**SECTION 3. Amendment.** Subdivision (H) of Section 17.467.002 of the BMC is hereby stricken in its entirety and replaced with the term "Reserved."

**SECTION 4. Amendment.** Subdivision (E)(12) of Section 17.505.004 of the BMC is hereby stricken in its entirety and replaced with the term "Reserved."

**SECTION 5. Amendment.** Chapter 17.680 is hereby amended in its entirety to read as set forth in Attachment A hereto, which is incorporated herein.

**SECTION 6. Exceptions; procedures.**

- A. This ordinance shall not be applicable to the extent that it would violate the constitution or laws of the United States or the State of California. This ordinance shall not apply to oil and gas exploration, development, or production projects for which the project proponent has obtained a vested right pursuant to state law prior to the effective date of this ordinance.
- B. In the event a property owner contends that the application of this ordinance effects an unconstitutional taking of property without compensation, the property owner may request an exception to the application of this ordinance. The Planning Commission shall grant such an exception if it finds that both (1) the application of this ordinance would constitute an unconstitutional taking of property, and (2) the exception will allow oil and gas exploration, development, and production uses to the extent necessary to avoid such a taking.

In presenting a request to the Planning Commission, a property owner shall prepare and submit an exception application pursuant to BMC Chapter 17.800. The exception application shall be processed pursuant to Section 17.800.010. The Planning Commission's determination under this sub-section may be appealed to the City Council in the same manner as prescribed in Chapter 17.880 of the BMC.

- C. In evaluating requests for exceptions pursuant to sub-section B of this section, the Planning Commission's decision shall be based on factors including the applicant's reasonable investment-backed expectations in acquiring and improving the property, the value of the property and improvements, the zoning and regulatory history of the property, the remaining value and allowed uses of the property, whether oil and gas development uses would constitute a nuisance, and any other factor the Planning Commission reasonably determines is related to determining whether this ordinance has denied the property owner all or substantially all economically beneficial uses of the property.

**SECTION 7. CEQA.** The City Council finds that this ordinance is exempt from CEQA pursuant to the "common sense" exemption under CEQA Guidelines Section 15061(b)(3), as the action will not cause a change in any of the physical conditions within the area affected by the ordinance, and pursuant to the categorical exemption set forth at Section 15308 of the CEQA Guidelines for Class 8 – Actions by Regulatory Agencies for the Protection of the Environment.

**SECTION 8. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be unconstitutional or invalid by the decision of a court of competent jurisdiction, such decision shall not affect the validity

of the remaining portions of this Ordinance or its application to other persons or places.

**SECTION 9. Publication; Effective Date.** This Ordinance shall take effect and be enforced within thirty (30) days from and after the date of its adoption by the City Council at a second reading, and shall be posted and published in accordance with the California Government Code.

**THIS FOREGOING ORDINANCE** was adopted at a regular meeting of the Brentwood City Council on the \_\_\_\_ day of \_\_\_\_\_, 2024 by the following vote:

AYES:  
NOES:  
ABSENT:  
RECUSE:

APPROVED:

\_\_\_\_\_  
Joel Bryant, Mayor

ATTEST:

\_\_\_\_\_  
Margaret Wimberly, MMC  
City Clerk



**ATTACHMENT A****Chapter 17.680 OIL AND GAS PRODUCTION**

- 17.680.001 Title and purpose of provisions.
- 17.680.002 Definitions.
- 17.680.003 Permits required.
- 17.680.004 Development standards.
- 17.680.005 Sound level measurement— General.
- 17.680.006 Performance standards.
- 17.680.007 Consolidation of drilling sites.
- 17.680.008 Noise control officer designated.
- 17.680.009 Nonconforming drilling or production sites.
- 17.680.010 Nuisance.
- 17.680.011 Spills.
- 17.680.012 Building permits.
- 17.680.013 Insurance.
- 17.680.014 Indemnification.
- 17.680.015 Sale of wellsite.
- 17.680.016 Right of entry.
- 17.680.017 Notices.
- 17.680.018 Violations; enforcement.
- 17.680.019 Stop orders.
- 17.680.020 Revocation of permit.
- 17.680.021 Development encroachment in petroleum areas.

**17.680.001 Title and purpose of provisions.**

A. Title. The Provisions of Chapter 17.680 shall be known as the “oil and gas production regulations” of this title.

B. Purpose. The purpose of the “oil and gas production regulations” is to establish reasonable and uniform limitations, safeguards and controls for the present operation of and future drilling for and production of oil, gas, and other hydrocarbon substances within the city so that such activities may be conducted in harmony with other uses of land within the city, thus protecting the people of the city in the enjoyment and use of their property and providing for their comfort, health, safety and general welfare.

C. The council hereby finds and determines that uncontrolled oil, gas, and other hydrocarbon substance exploration, development, and production uses would be detrimental to the general welfare and public peace, health, safety, comfort, convenience, and prosperity of the citizens and residents of the city. Therefore, except as otherwise provided in this chapter, including compliance with all of the limitations and regulations on operations set forth in section 17.680.004, no person shall engage in oil, gas, or other hydrocarbon substance exploration, development, and production activities from any location within the city. Notwithstanding any other provision of this Code, oil and gas exploration, development, and production uses may be permitted or permitted subject to approval of a conditional use permit in a particular district

only when oil and gas exploration, development, and production uses are expressly listed as permitted or conditionally permitted uses in that specific district.

**17.680.002 Definitions.**

A. Those definitions provided in Public Resource Code Section (PRC) 3000 et seq., relating to oil and gas exploration and production shall apply to this chapter and are adopted herein by reference. In addition to those definitions in the PRC, the following shall apply:

B. All terminology used in this chapter, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

“Ambient noise level” means the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

“A-weighted sound level” means the sound level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

“Decibel” means a unit for measuring the amplitude of a sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty microPascals.

“Emergency work” means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

“Equivalent sound level,  $L_{eq}$  (dBA)” means the level of a steady sound which, in a stated time period and at a stated location, has the same A-weighted sound energy as the time-varying sound. Mathematically,  $L_{eq}$  is determined as follows:

$$L_{eq} = 10 \log_{10} \left[ \frac{1}{T} \int_0^T \frac{p^2(t)}{p_0^2} dt \right] \text{ dB}$$

(REF EPA “—LEVELS—,” 550/9-74-004, March, 1974.)

The  $L_{eq}$  can be estimated from direct observations of a hand held sound level meter with the following equation:

$$\text{Leg} = 10 \log \frac{I}{I_0} = 10 \log \frac{N}{N_0} = 10 \log \frac{L_i}{L_{i0}}$$

(REF; ANSI SI.13-1971, PAGE 23)

"Noise control officer (NCO)" means the municipal agency or department having lead responsibility for this chapter. (If no such agency is designated, the term shall mean the municipal official having lead responsibility for this chapter.)

"Noise disturbance" means any sound which, as judged by the noise control officer:

1. Endangers or injures the safety or health of human beings or animals, or
2. Annoys or disturbs reasonable persons of normal sensitivities, or
3. Endangers or injures personal or real property, or
4. Violates the factors set forth in Section 17.680.005.

Compliance with the quantitative standards as listed herein shall constitute elimination of noise disturbance.

"Production facilities" means all equipment, pipelines, etc., used for the purpose of producing or transporting oil, gas and other hydrocarbon substances within or through the City of Brentwood, excluding normal public utility gas lines.

"Pure tone" means any sound which can be judged as audible as a single pitch or a set of single pitches by the noise control officer. For the purposes of this chapter, a pure tone shall exist if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by five dB for center frequencies of five hundred Hz and above and by eight dB for center frequencies between one hundred sixty and four hundred Hz and by fifteen dB for center frequencies less than or equal to one hundred twenty-five Hz.

"Sensitive receptor" means a residence, including any private home, condominium, apartment, or living quarter; an education resource, including a preschool, kindergarten, grades 1 to 12, day care center, park, playground, university, or college; a community resource center, including a youth center; a health care facility, including a hospital, retirement home, or nursing home; live-in housing, including a long-term care hospital, hospice, or dormitory; and any building housing a business that is open to the public.

"Sound level meter" means an instrument meeting or exceeding American National Standard Institute's Standard S1.4-1971 for Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

**17.680.003 Permits required.**

Appropriate permits shall be obtained from the city for all oil, gas or other hydrocarbon operations including, but not limited to, seismic or geophysical oil or gas exploration or survey, drilling a new or reworking an existing well for oil, gas or other hydrocarbon substances, construction of related facilities for oil, gas or other hydrocarbon production. It shall be unlawful and a nuisance for any person to conduct any drilling operation or to drill and produce any oil and gas well or well hole in the surface or subsurface of the city from any drill site without first having applied for and obtained the requisite permits. The following permits shall be required:

A. A conditional use permit shall be obtained prior to the drilling of a new well or the reworking of an existing well which has not complied with these regulations, or prior to the construction of any new related facilities for the production of oil, gas or other hydrocarbon substances within or through the city excluding normal public utility gas lines.

B. A temporary use permit shall be obtained prior to seismic or geophysical surface-based exploration or survey for the purpose of locating gas, oil or other hydrocarbons, excluding any exploratory drilling operations which are subject to a conditional use permit.

C. A temporary use permit shall be obtained by the operator prior to any reworking of a well that has previously complied with these regulations.

D. Emergency Work. Whenever it is necessary to do work on a well to prevent a hazardous condition or the loss of the well, the operator is authorized to do such work without permits; however, the operator must immediately report any emergency which has the potential of threatening adjoining properties. All other emergencies must have a preliminary report submitted to the city within twenty-four hours and a final report within five working days after the emergency work is completed. Such emergency work shall be excluded from the maximum permissible sound levels during the term of the emergency only.

E. Administrative Conditional Use Permit. Applications for new or redrilled wells and/or production facilities shall be reviewed and acted on by community development department staff at a public hearing. Staff may refer any such case to the planning commission for review and action. Any staff decision may be appealed to the planning commission by any interested party upon filing a written appeal request and payment of an appeal fee as provided for under the provisions of appeal of a planning commission decision in the zoning ordinance.

F. Application Submittal. All applications for conditional use permits listed in subsection A of this section, shall include the following information in addition to the standard information required for a conditional use permit application:

1. Plan of drill site, production, storage and all surface facilities, including each derrick, tank, sump, pipeline, boiler and other existing and proposed

- equipment, including the distance to all existing and approved dwellings and other structures and land uses within a three thousand two hundred foot radius of the subject oil/gas facility;
2. Names and addresses of the mineral, surface and lease owners of the subject well and parcel;
  3. A statement of the provisions for water for the drill rig;
  4. Name and address of the person upon whom service of process upon applicant may be made, and a consent that service of summons may be made upon such person in any action to enforce any of the obligations of the applicant;
  5. A statement that the applicant has the right, by reason of ownership or the permission of the owner, to pass through and enter all property through which such well is proposed to pass and that the applicant is duly authorized by the property owner to make and file the application;
  6. A complete legal description of the subject site;
  7. A brief description of the manner in which the oil will be produced and transported if the drilling operation is successful;
  8. An oil spill contingency plan that specifies the location, description of responsibilities for cleanup and monitoring, disposition of wastes, and reporting incidents;
  9. A phasing plan for the staging of the drilling operations, including but not limited to, an estimated timetable for project construction, operation, completion and abandonment, as well as location and amount of land reserved for future expansion;
  10. Copies of all other required permits, insurance and bonds, including, but not limited to, those required by the California Department of Conservation Geologic Energy Management Division (CalGEM), the Regional Water Quality Control Board and the Bay Area Quality Management District;
  11. An acoustical study prepared by a qualified acoustical engineer documenting existing ambient noise levels over a twenty-four hour period on the drill site and within a five hundred foot radius, if there are any occupied buildings within that radius;
  12. Any and all other information that the city may, in its discretion and from time to time, require;
  13. A written agreement duly executed by the applicant that in the event a permit is issued to him or her by the city, he will, as a condition to any of his operations within the city, faithfully comply with and abide by each and all of the provisions, requirements, and conditions of this chapter, and conditions of approval.

#### **17.680.004 Development standards.**

The following development standards are applicable to all drilling or production operations within the city unless approved otherwise through the conditional use permit procedure:

- A. All oil and gas development related buildings, structures, equipment, systems, and drilling and production operations shall comply with the provisions of this code,

California Public Resource Code Section 3000 et. seq., all regulations of CalGEM and the State Division of Industrial Safety, and all other agency regulations which apply to such operations.

B. Minimum Production Site Size. All production sites shall be minimum of three acres in size in order to accommodate consolidation of drill site, equipment, soundproofing, landscaping, circulation, and allow for reuse of the property at such time as the site is no longer utilized for drilling operations, unless a smaller site is approved by the planning commission through the conditional use permit procedure after careful consideration and the planning commission determines that a smaller site can accommodate all equipment, landscaping, etc., and is of adequate size for reuse.

C. Access Roads and Production Site. All private roads used for access to the production site and the production site itself shall be surfaced with a permanent or semi-permanent surface such as rock or gravel and maintained to prevent dust or mud.

D. Sumps or Ponds. All sumps, sump pits, ponds or similar devices such as portable tanks constructed onsite for the purpose of holding waste material shall be lined to prevent such waste material from penetrating into the soil. Furthermore, when such sump, pit or pond is no longer needed, it shall be excavated of all foreign materials and filled with compacted earth to the level of the surrounding terrain.

E. Fencing. All sumps, pits, excavations and production sites shall be enclosed with a fence, the type of fencing and height to be determined by the planning commission at the time of consideration of the conditional use permit. The fencing required by the planning commission shall be at least as protective of the environment as that required in 14 Cal. Code Regs section 1778.

F. Abandonment of Site. At such time as the oil or gas drilling or production site is abandoned, the responsible party shall abandon the site in accordance with CalGEM regulations for urban areas and all other applicable regulations. Furthermore, the drill or production site and all access roads shall be restored to their original condition or as nearly as practicable unless approved otherwise by CalGEM and the planning director of the city upon receipt of a written request by the property owner. The responsible party shall furnish the city with a copy of the CalGEM approval showing compliance with all abandonment proceedings under state law.

G. Nonproducing Well. Whenever the cost of production exceeds the revenue produced by an oil or gas well or whenever a well is shut down for a period of ninety consecutive days or more, it shall be considered a nonproducing well. When a well is determined to be nonproducing or is shut down for ninety consecutive days or more, the operator shall report to the city the status of such a well.

The operator shall then have ninety days to conduct an engineering evaluation to determine the economic viability of continuing production operations. If it is

determined that the well is no longer economically viable, the well shall be abandoned in conformance with Section 17.680.004(F).

The operator shall submit, upon request, reports to the city on each well reflecting the cost/revenue ratio of each well in order to determine if the well is nonproducing.

H. Site Development. At the time of application for a conditional use permit to all drilling and production, the applicant shall submit a plan showing relationship to existing land use, ultimate land use if different, and shall indicate proposed mitigation measures to all anticipated impacts including, but not limited to, noise, light or glare, odor, traffic, aesthetics, etc. Furthermore, the application shall include a plan for the ultimate reuse of the drilling or production site and how the ultimate use of the site will relate to adjacent uses.

I. Screening and Landscaping Production Sites. All oil or gas production sites shall be adequately screened from adjoining properties and public rights-of-way, with the specific type of screening and landscaping to be determined by the planning commission at the time of consideration of the conditional use permit.

J. Well Location. No new well, storage tank, or production facility shall be located within three thousand two hundred feet of any sensitive receptors.

K. Soundproofing. If drilling or redrilling operations are located within one thousand feet of an occupied building, noise sources associated with the operation shall be enclosed with soundproofing sufficient to ensure that expected noise levels do not exceed the noise limits contained in this chapter. Permittee shall install every device in the nature of exhaust mufflers and other equipment for the elimination of noise, obtainable and practicable for that purpose, on all operating machinery and equipment and on the well in all instances where objectionable noises might otherwise exist. Soundproofing shall be installed prior to commencement of operations and shall include but not be limited to the following:

1. Any well which is to be drilled or redrilled, and which is within five hundred feet of an occupied building, shall have all parts of a derrick above the derrick floor, including the elevated portion used as a hoist, enclosed with fire resistive soundproofing blanket or panel material. Such soundproofing shall comply with accepted American Petroleum Institute standards and shall be subject to fire department regulations. All doors shall be closed during drilling, except for ingress and egress and necessary logging, testing and well completion operations. Alternative materials or methods of noise abatement may be used, such as electric power for drilling, provided such alternative is approved by the planning commission. The commission may approve any such alternative if they find that the proposed material and/or method have equal soundproofing properties and fire resistive qualities to being enclosed as stated above. Any alternative may require the submission of evidence by the permittee to substantiate any claims that may be made regarding the use of such alternatives. The planning commission may waive these soundproofing requirements if they find them unnecessary.

2. Any well which is to be drilled or redrilled, and which is within five hundred one feet to one thousand feet of any occupied building, shall be enclosed by a plywood fence with fire resistive sound insulating material on the interior of the fence. The fence shall specifically enclose all generators and the drill rig itself, to a height of twenty feet from grade. Alternative materials or methods of noise abatement may be used, such as earthen berms, other sound insulating materials, or other methods proposed by applicant, or electric power for drilling, provided such alternative is approved by the planning commission. The commission may approve any such alternative if they find that the proposed material and/or method have equal soundproofing properties and fire resistive qualities to being enclosed as stated above. Any alternative may require the submission of evidence by the permittee to substantiate any claims that may be made regarding the use of such alternatives. The planning commission may waive these soundproofing requirements if they find them unnecessary.

L. Signs. All oil/gas facilities shall have a legible, permanent, prominently displayed and maintained metal sign no less than two square feet in area containing the following: name of the drilling contractor, name of the owner or operator, twenty-four hour emergency phone number, lease name and name and number of the well. If the operator changes, it will be the new operator's responsibility to replace the sign within thirty days after the change.

M. Derricks. All derricks and masts shall be consistent with California Division of Industrial Safety and OSHA standards, be at least equivalent to the standards and specifications of the American Petroleum Institute (API), and meet the following standards:

1. All derricks or masts, standard or portable, used for drilling, redrilling, rework, production or servicing, within two hundred feet of a public right-of-way or building, shall have derrick crown(s) shrouded to prevent oil and water spraying into the air.
2. All derricks and masts hereafter erected for drilling, redrilling or rework shall be removed within thirty days after completion of the work unless otherwise ordered by the director of CalGEM.

N. Permittee shall immediately remove the derrick and all other structures not required in the event gas only be produced from the well and erect a suitable and sightly structure over the well of the most modern and approved design for the purpose, using only such space for the same as is necessary, and also shall fill all holes and excavations, save the well, and restore all surfaces to their original condition.

O. Storage Tanks/Production Equipment.

1. Unless otherwise permitted by the planning commission, the total capacity of oil storage facilities shall not exceed two thousand barrels per well, and



- no tank shall exceed one thousand barrels capacity. Tanks shall be constructed and maintained to be vapor tight.
2. Each oil, gas separator shall be equipped with both a regulation pressure-relief safety valve and a bursting head.
  3. No storage tank shall be erected closer than fifty feet from any building, nor shall any building be erected within fifty feet of any storage tank. The city may permit this distance separation to be reduced for low occupancy industrial or warehouse buildings, subject to additional or special safety of fire systems requirements which may be approved and imposed by the fire district. These distance provisions shall not apply to any tank or related facility constructed prior to 1998.
  4. All tanks and attached fixtures shall be constructed and maintained in accordance with American Petroleum Institute, OSHA, California Division of Industrial Safety, CalGEM, National Fire Protection Association (NFPA), and EPA standards.
  5. Tanks shall rest directly on the ground or on foundations or supports of gravel, concrete, masonry, piling or steel. Tank foundations shall be elevated, level and larger in diameter than the tank itself. Exposed piling or steel tank supports shall be protected by fire resistive materials to provide a fire resistance rating of not less than two hours. Tank supports and connections shall be designed and installed to resist damage as a result of seismic activity.
  6. No tank for storage of any flammable liquid shall be located closer than three feet to any other such tank.
  7. New tanks used for storage of crude petroleum and other flammables shall be diked or provided with diversion walls and catchment basins, or combinations thereof, to meet the requirements of CalGEM and NFPA. The volumetric capacity of a diked area shall not be less than capacity necessary to hold the full volume of the largest tank below the height of the dike.
  8. Dike walls shall be of concrete, solid masonry or earth designed and maintained to be liquid tight and to withstand a full hydrostatic head, except that all dikes in residential zones shall be solid masonry or poured in place concrete. Asphaltic surfacing shall be required on all earthen dikes. Surfacing shall be impervious and prevent leaching through pavement.
  9. All tank piping, valves, fittings and connections including normal and emergency relief venting, shall be installed and maintained in accordance with current API standards.
  10. All production equipment shall be kept painted in neutral, earthtone colors and maintained at all times.

#### **17.680.005 Sound level measurement— General.**

A. Any noise level measurements made pursuant to the provisions of this chapter shall be performed using a sound level meter as defined in Section 17.680.002 and shall conform to methods prescribed by ANSI or its successor. Calibration of the measurement equipment, utilizing an acoustic calibrator, shall be performed immediately prior to recording any noise data.

B. The location selected for measuring exterior noise levels shall be at a point within the property line of the receiver's location. Where feasible the microphone shall be at a height of three to five feet above ground level and shall be at least ten feet from walls or similar reflecting surfaces.

C. A microphone windscreen shall be utilized for all outdoor measurements.

D. Where possible, sound level measurements shall be conducted during fair to dry weather conditions with average wind velocities of less than ten miles per hour. In all cases weather information shall be documented during the sound survey interval. Items to report shall include but are not limited to wind velocity and direction, dry and wet bulb temperature (degree in Fahrenheit), and relative humidity (percent).

E. Although the use of sophisticated acoustical instrumentation for the measurement of equivalent sound level,  $L_{eq}$ , (dBA) is available and its use is preferred; it is not essential for the purposes of this chapter. The equivalent sound level ( $L_{eq}$ ) of the noise source in question may be estimated using a hand held sound level meter by averaging at least twenty separate observations over a measurement interval that is representative of a typical one hour operation of the noise source. Depending on the character of the noise source the measurement interval may vary from as little as a few minutes to as long as one hour.

F. "Slow" meter response is generally preferred. However, if the noise source changes level rapidly in a random fashion several times a minute, exceeding a ten dB dynamic range, then "fast" response shall be used. The noise control officer can make a determination of the appropriate meter, meter response, "fast" or "slow" to be used in those cases that are unclear.

#### **17.680.006 Performance standards.**

The following noise performance standards are applicable to all drilling or production operations within the city unless approved otherwise through the conditional use permit procedure. The noise levels caused by drilling, re-drilling or production operations shall be monitored on a complaint basis or periodically at the discretion of the noise control officer of the city. The cost of such noise monitoring shall be borne by the operator conducting such drilling, re-drilling or production operations.

A. Maximum Permissible Sound Levels by Receiving Land Use. No person shall operate or cause to be operated any oil drilling or production equipment at any location within the incorporated city which causes the noise level when measured on any other property, either incorporated or unincorporated, to exceed the noise level limits set forth for the receiving land use category in Tables 17.680.006(1) and 17.680.006(2).

**Table 17.680.006(1)****EXTERIOR NOISE LIMITS FOR DRILLING OR REDRILLING OPERATIONS**

<b>Receiving Lane Use Category</b>	<b>Time Period</b>	<b>Equivalent Sound Level, Leq, (dBA) for any hour</b>
Residential	7:00 a.m.—10:00 p.m.	75
	10:00 p.m.—7:00 a.m.	50
Agricultural, Commercial or Industrial	7:00 a.m.—10:00 p.m.	75
	10:00 p.m.—7:00 a.m.	70

**Table 17.680.006(2)****EXTERIOR NOISE LIMITS FOR PRODUCTION OPERATIONS**

<b>Receiving Lane Use Category</b>	<b>Time Period</b>	<b>Equivalent Sound Level, Leq, (dBA) for any hour</b>
Residential	7:00 a.m.—10:00 p.m.	55
	10:00 p.m.—7:00 a.m.	45
Agricultural, Commercial or Industrial	7:00 a.m.—10:00 p.m.	60
	10:00 p.m.—7:00 a.m.	50

B. Noise Abatement Methods. The noise abatement method(s) in which the operator meets the noise level standards in Table(s) 17.680.006(1) or 17.680.006(2) shall be determined by the operator to allow the operator the flexibility of utilizing the most efficient and cost effective method(s) available to the operator.

1. If noise complaints are received by the city, or if noise levels exceed those permitted by this chapter, a noise violation notice shall be issued to the operator.
2. Upon receipt of notice, the operator shall submit for the approval of the community development department the procedures the operator will undertake to correct the violation. Corrective measures must be initiated within twenty-four hours of operator's receipt of the notice. The city may require additional or follow-up noise field tests by an acoustical engineer to ensure compliance, in which case the operator shall pay the actual costs to the city for such tests.
3. Failure to comply shall be reason for the city to limit drilling, redrilling or other operations to daylight hours (seven a.m. to seven p.m.)

4. Nothing shall preclude the city from pursuing other administrative or legal remedies to obtain compliance.

C. Adjustment for Ambient Noise Level. In the event the ambient noise level exceeds those limits established in Tables 17.680.006(1) or 17.680.006(2), then the planning commission may adjust the "exterior noise limits" upward for the particular site in question to reflect said ambient level only after careful consideration of all pertinent data. However, in no case will the "exterior noise limits for production operation," Table 17.680.006(2), be increased by more than ten dBA.

D. Correction for Character of Sound, Production Operations Only. In the event the alleged offensive noise, as judged by the noise control officer, contains a steady audible tone such as a whine, screech, or hum, the standard limits set forth in Table 17.680.006(2) shall be reduced by five dB.

E. Pulsating or intermittent noise activities such as hammering or rocking pipes, acceleration and deceleration of engines or motors, low speed compressors which fire intermittently and other such pulsating or intermittent noises shall be prohibited between the hours of ten p.m. to seven a.m. for all drilling operations and shall be prohibited at all times for all production operations if such noise creates a nuisance within any residential, commercial or industrial area.

F. Light or Glare. It is unlawful for any person to operate, or cause to be operated any oil production equipment on any well, or incidental to a well, within the incorporated limits of the city in any manner so as to direct any light or glare such that it negatively impacts any adjoining residential or commercial land uses. Furthermore, such light or glare must be directed away from any public street such that it will not create a traffic hazard.

G. Waste Discharge. At no time shall any waste matter be discharged into the public sewer, storm drain, or irrigation systems, any stream or creek, or into the ground, except in accordance with the regulations or requirements of all applicable local, state or federal agencies.

H. Vibration. Any ground vibration generated by any oil or gas drilling or production operation which is discernible at any developed property shall be prohibited. Vibration dampening equipment of the best available technology shall be installed as required by the city so as to reduce vibration to a minimum. No drilling shall be commenced until the building official has approved the vibration dampening equipment installation, and drilling shall be discontinued at any time the building official determines that the vibration dampening equipment is not functioning as intended, such that vibrations are discernible from developed properties.

- I. Fire, Safety and Explosion. All uses shall provide adequate safety devices against fire, explosion and other hazards and adequate firefighting and fire suppression equipment in compliance with applicable fire prevention codes.
- J. Air Pollution. All uses shall comply with regulations of the San Francisco Bay Area Air Pollution Control District.
- K. Flaring Wells. The flaring of wells shall be limited to daylight hours only.
- L. Heavy Equipment. Transport of heavy equipment or large trucks to and from the production site shall be limited to the hours of seven a.m. to ten p.m.

**17.680.007 Consolidation of drilling sites.**

- A. At all times when practical and reasonable, new drill sites shall be developed at an existing established drill site in order to free more land for other uses and reduce the interface between oil or gas activities and other land uses, thereby making the potentially adverse impacts from such operations easier to mitigate; and provide for the opportunity to establish greater buffers and separation between oil or gas facilities and other uses.
- B. Whenever a new drilling site is proposed, the proponent shall analyze, in conjunction with the city and CalGEM, all gas or oil zones and the typical reach of directionally drilled wells in order to establish a site where all or most of the resource can be removed from one drilling site.

**17.680.008 Noise control officer designated.**

The noise control officer shall be the planning director or a person designated by the planning director of the city. The noise control officer is authorized to enter property for the purpose of investigating complaints of noise or for normal periodic checks of noise levels at drilling or production sites.

**17.680.009 Nonconforming drilling or production sites.**

Drilling or production sites legally established within the unincorporated area and subsequently annexed to the city of Brentwood may continue without complying with the requirements of this chapter provided the site or operations on the site do not create a public nuisance as defined within this chapter. Whenever an existing drilling or production site which has not complied with these regulations is reworked, meaning that the intensity of the use on the site is increased or the size of the operation is enlarged, it shall then comply with these regulations. A nonconforming use that is

changed to, or replaced by, a conforming use shall result in termination and subsequent abandonment of the nonconforming use.

#### **17.680.010 Nuisance.**

No person shall conduct any oil or gas operation in a manner that would create any noise, odor, or vibration detrimental to the health, safety, or welfare of the surrounding area or any reasonable number of persons. Such manner of operation is declared to be a public nuisance and when determined by the city that a drilling site or operation constitutes a public nuisance, the city shall take all actions necessary and available to abate such nuisance.

#### **17.680.011 Spills.**

In the event of any leak or spill of any pollution or deleterious substance, whatever the cause thereof, the permittee shall notify the community development department. If, in the judgment of the city, such leak or spill represents a potential environmental hazard, the city may issue whatever corrective orders deemed appropriate, and may require the appropriate testing of the surface and subsurface for pollutant incursion, the cost of such tests to be borne by the permittee.

#### **17.680.012 Building permits.**

Building permits shall be secured for all permanent structures in conformance with the Uniform Building Code. Electrical permits shall be required for all electrical connections for drilling/redrilling and/or pumping units if electrical motors are utilized.

#### **17.680.013 Insurance.**

No operations shall commence until the applicant files with the city insurance certificates as follows:

Permittee shall carry a policy of standard comprehensive general public liability insurance for the drilling period, including coverages for: sudden and accidental pollution including the cost of environmental restoration, underground resources coverage and completed operations. The policy shall insure the city against all costs, charges and expenses incurred by it for cleanup of sudden and accidental pollution. The insurance shall name the city as an additional insured for third party liabilities arising from any oil/gas drilling operations insured under the certificate during the period of coverage. Insurance shall include contractual liability covering bodily injuries and property damage, naming the permittee and the city of Brentwood, in the amount of one million dollars per occurrence. The deductible must be no greater than ten thousand dollars. The policy shall provide for a thirty day cancellation notice to the

city in the event the policy will be terminated for any reason except nonpayment of premium in which case the notice period shall be ten days.

#### **17.680.014 Indemnification.**

The operator shall indemnify, defend and hold the city, and their elected officials, officers, agents and employees free and harmless from all actions, suits, claims, demands, liability, costs, and expense, including prosecution claimed or established against them, or any of them, for damage or injuries to persons or property of whatsoever nature, arising out of or in connection therewith the acts or omissions of operator, its servants, agents, or employees, or to which operator's negligence shall in any way contribute, or arising out of the operator's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the operator.

#### **17.680.015 Sale of wellsite.**

Whenever a well is to be sold, the permittee shall notify the community development department in writing a minimum of thirty days prior to the effective date of sale.

#### **17.680.016 Right of entry.**

Any officer or employee of the city whose duties require the inspection of the premises shall have the right and privilege, at all reasonable times, to enter upon any premises upon or from which any operations being conducted for which any permit has been issued or is required, for the purpose of making any inspections. No owner, occupant, or any other person having charge, care, or control of any premises shall fail or neglect to permit entry.

#### **17.680.017 Notices.**

Every operator of any well shall designate an agent, who must be a resident of the state during all times he or she serves as agent, upon whom all orders and notices may be served in person or by mail. Every operator shall, within five days, notify the community development department in writing of any change in such agent or mailing address. The operator shall submit to the community development department a copy of the CalGEM report of property/well transfer/acquisition within thirty days after sale, assignment, transfer, conveyance or exchange of any oil/gas facilities.

#### **17.680.018 Violations; enforcement.**

A. Any violation of this chapter is hereby declared to be a public nuisance, and the city attorney shall, upon order of the council, immediately commence an action and

proceedings for the abatement, removal, and enjoinder thereof in any manner provided by law, including applying to any court having jurisdiction to grant such relief as may be necessary to restrain and enjoin any person from committing such violation.

B. Violations of this chapter are further hereby declared to constitute a misdemeanor.

#### **17.680.019 Stop orders.**

If any operator is violating any of the provisions of this chapter which affect public health and safety, the city may issue a stop work order for immediate cessation of operations. The operator shall immediately comply with the order and shall not resume operations until written consent from the city has been obtained, or unless ordered by CalGEM due to special or emergency circumstances.

#### **17.680.020 Revocation of permit.**

Any permit issued pursuant to the provisions of this chapter may be revoked by the planning commission, or on appeal by the city council, upon a finding:

A. That permittee has failed, neglected, or refused to comply with and abide by any of the conditions of their permit; or

B. That permittee has failed, neglected, or refused to comply with and abide by, or has in any way violated any of the provisions of this chapter, any other ordinance of the city, or any other law, rule or regulation, either directly or indirectly, by reason of, in connection with, or incident to his or her operations under the permit or upon the premises covered by such permit; or

C. If any of permittee's operations, or the continuance thereof, upon the premises covered by his/her permit are or are likely to become a menace or hazard to business, to any public property, to any interest of the city, or to the lives or safety of persons; or

D. If permittee shall have made any willful misrepresentation of fact in any application for such permit or in any report or record required by this chapter to be filed with or furnished to the city by permittee.

E. Any permit, either in connection with a proceeding for the revocation thereof or otherwise, may be suspended by the commission or council upon finding that the operations of the permittee constitute or have become an immediate menace or hazard to commerce, to any public property, to any interest of the city, or to the lives



or safety of persons. The suspension and/or revocation of any permit shall be made and accomplished in the following manner.

F. Following a public hearing by the planning commission, or on appeal by the city council, notice of suspension and/or revocation shall be served upon permittee, stating the reasons and grounds upon which the proposed action is based, requiring permittee within fifteen days after the service upon him or her of such notice, to cure and remedy any fault, noncompliance, or violation of any condition for which suspension or revocation of the permit may be made. Said permit shall, without any further or other action of or by the city, be revoked five days after the time herein provided for the curing of any default, or within any further times as the commission or council may have granted, has expired.

G. At such hearing, the permittee and the public shall be given an opportunity to present information relevant to consideration of suspension or revocation of the permit.

H. It is unlawful to carry on any of the operations authorized by any permit during any period of suspension or after revocation; provided that nothing shall prevent the performance of such operations as may be ordered by CalGEM, necessary for safety, or necessary to cure and remedy the default, noncompliance or violation for which suspension or revocation was ordered.